IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 52 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : To all Sessions & Additional Sessions Judges

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VALLABHBHAI NARANBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 52 of 2002

MR SATYEN B RAWAL for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

MR PJ YAGNIK for Respondent No. 2-3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 06/04/2002

ORAL JUDGEMENT

Rule. Learned APP Mr.K.C.Shah waives service of rule for respondent No.1-State of Gujarat. Shri

P.J.Yagnik waives service of rule for respondent-accused Nos.2 and 3.

The petitioner-original complainant-Shri Vallabh Naranbhai Parmar is a practising advocate before the Trial Court and brother of deceased-Shantaben has filed this revision application before this court against the impugned judgment and order 3.1.2002 passed by the learned Sessions Judge, Surendranagar releasing respondents-accused on bail in Criminal Misc. Application No.531/01 filed before him in connection with the offences registered against them under Sections 306, 498A, 114 of IPC and Sections 3 and 4 of Prohibition of Dowry Act in connection with the FIR No.86/01 registered at Muli Police Station.

The parties are belonging to a lowly strata of `Chamar'. The marriage of Shantaben and respondent-accused No.3-Anilkumar Balabhai on 6.5.1999. Deceased-Shantaben was carrying pregnancy of 8 months. But, fed up with the continuous torture given by her husband and others she consumed poison and committed suicide on 21.11.2001. The applicant-complainant -Vallabhai Naranbhai Parmar, who is real brother of Shantaben lodged complaint after two days of the incident against the respondents-accused and others for the offences under Sections 306, 498A, 114 of IPC and Section 3 of Prohibition of Dowry Act.

In the regular bail application being Criminal Misc. Application No.351/01 filed by the respondents accused, the learned Judge, after considering the material on record and the judgment of the Hon'ble Supreme Court in case of Bhagirathsinh Jadeja Vs. State of Gujarat reported in 1984(1) GLR 332 released the respondents-accused on bail on certain conditions.

Learned counsel Mr.Raval appearing for petitioner complainant submitted that the learned Judge has wrongly released the respondents-accused on bail on flimsy grounds. According to his submission the principles laid down by Hon'ble Supreme Court in case of Bhagirathsinh's case (supra) will have no application. He submitted that the learned Judge has totally overlooked the fact that it was case under Section 306 of IPC where the deceased Shantaben within two years of married life committed suicide and that too when she was carrying pregnancy of 8 months. In such type of cases, the learned Judge, who is fairly a senior District and Sessions Judge, totally overlooked the provisions of Section 113B of the Indian Evidence Act and granted bail. He, therefore, submitted

that the bail granted by the learned judge should be cancelled.

However, learned counsel Mr.Yagnik for respondents-accused submitted that the learned Judge hade discretion and when he has exercised his discretion, then this court should not interfere with such discretionary orders in its revisional jurisdiction. He relied upon the judgment of the Hon'ble Supreme Court in Bhagirathsinh's case(supra), which has also been referred to by the learned Judge. In addition to that Mr.Yagnik has also placed reliance upon two judgment of Hon'ble Supreme Court; (1) Dolatram And Ors. Vs. State of Haryana reported in 1995 SCC (Cri.) 237 and (2) Subhendu Mishra Vs. Subrat Kumar Mishra reported in AIR 1999 SC 3026. There would not be any quarrel with the principles laid down by the Hon'ble Supreme court in Bhagirathsinh's case. The said judgment is a well known judgment to one and all. But, unfortunately, learned Judge has totally overlooked the fact that in the instant case it was an offence under Section 306 IPC where the court has duty to raise presumption against the accused under Section 113B of the Evidence Act.

It is true that in Dolatram's case (supra) the Hon'ble Supreme Court granted bail but it was on facts of that case and with due respect the provisions of section 113B of the Indian Evidence Act was never brought to the notice of Their Lordships. Be that as it may. On facts of the case, their Lordships of Hon'ble Supreme Court were of the opinion that the High Court erred in interfering with the order of bail granted to the accused by the Trial Court. In a later judgment of Hon'ble Supreme Court in case of Subhendu Mishra's case no facts are stated and simply relying upon Dolat Ram's case Their Lordships observed in para 5 of the judgment that "The principles appear to have been totally lost sight of by the High Court while cancelling the bail". I am conscious of the fact that High Court should ordinarily not interfere with the bail which is discretionary order but when the learned Judge, who has completely ignored important provisions of Section 113B of the Indian Evidence Act and in a most cursory manner granted bail then there is no other option for this court but to interfere with the same in its revisional jurisdiction. While granting bail the learned Judge has completely overlooked the fact that this type of offences under section 304B, 306 because of dowry death are at great increase in the State and causing alarm to the public at large. These are the offences not against individuals but these are offences against society at large. It is

unfortunate that some of our subordinate judges without considering these aspects easily granting bail in such type of cases. It is shocking that in his entire order the learned Judge has not at all referred to the fact that deceased-Shantaben committed suicide was carrying 8 months of pregnancy.

It is true that there was delay of two days in filing complaint but it can never be said that the complainant, who was none less but advocate took time to prepare himself and drafted the complaint in such a manner that the accused may not be able to come out from the clutches of the law. The learned Judge should have borne in mind that complainant though may be an advocate but after all he was the brother of deceased-Shantaben, who committed suicide with pregnancy of 8 months and one should not forget that duty as a brother is first then as an advocate. This type of orders of bail shake the confidence of the public at large.

It seems that the learned Judge, who is fairly senior District and Sessions Judge is relying upon an old judgment of Hon'ble Supreme Court in Bhagirathsinh's case, which was delivered way back in 1984. Thereafter, much water has been flown and there are number of recent Hon'ble Supreme Court judgments and one of the latest judgments of Hon'ble Supreme Court circulated to the High Courts wherein the Hon'ble Supreme Court has emphasized that while granting bail the courts must take into consideration seriousness of the offences, gravity of the offences. But, as stated earlier, the learned Judge has not at all bothered to apply his mind to this and simply relying upon the old judgment of Hon'ble Supreme Court in Bhagirathsinh's case which has no application to the facts of this case granted bail.

Under the circumstances, when the learned Judge, who failed to exercise his discretion in judicious manner then there is no alternative to this court but to interfere with such orders.

Accordingly, this revision application is allowed and the impugned judgment and order passed by the learned Judge releasing the respondent accused Nos. 2 and 3, who are father-in-law and husband of deceased-Shantaben is hereby quashed and set aside. They shall now surrender to the police forthwith. If they do not surrender then the police shall arrest them.

At this stage, a request is made by learned counsel Shri Yagnik for the respondents-accused to stay

the operation of this order for some time. I do not see any reason to stay my own order when I am more than convinced that the learned Judge was wholly wrong in granting bail to the respondents-accused in such type of serious and heinous offences. Hence, this request of Mr.Yagnik is rejected. Rule made absolute accordingly.

(B.J.Shethna, J.)

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